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**BZA-1833  
NIKKO, LLC  
Variance**

**STAFF REPORT  
September 22, 2011**

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**REQUEST MADE, PROPOSED USE, LOCATION:**

Petitioner, who is the owner and represented by Joseph Bumbleburg, is requesting a variance to permit a 2' sign setback instead of the required 18' (sign setback is equal to sign height) on property located at 3510 US 52 S, just south of the recently completed bridge over the Norfolk Southern railroad tracks in Wea 11 (NE) 22-4. (UZO 4-8-6)

**AREA ZONING PATTERNS:**

This property was rezoned in 2005 from I3 to GB (Z-2234). Indiana Crop Improvement Association originally rezoned this site from R1 to Industrial (I) in 1988. The I district became I3 with the adoption of UZO in 1998. Other rezones in the area include R1 to I1 directly across the highway (Z-2038) and R1 to I3, directly south along CR 350S (Z-1957). The County Commissioners approved five separate GB rezones at the US 52/CR 350S intersection in 2000 (Z-1915, 1952, -1953, -1954 and -1955).

There has been no BZA activity in this area.

**AREA LAND USE PATTERNS:**

The site currently houses a gravesite monument business, a contractor, and a design firm. Farm ground, owned by AE Staley, immediately surrounds the site; Wabash National trailer storage and repair is further to the west. To the northeast across US 52 are a handful of single-family homes.

The property, still in unincorporated Tippecanoe County, is surrounded by Lafayette corporation limits to the south and west.

**TRAFFIC AND TRANSPORTATION:**

The site is located along US 52 S, classified as a rural divided primary arterial in the *Thoroughfare Plan*. Two driveways provide access to the site from the highway.

INDOT (Indiana Department of Transportation) built a bridge to carry US 52 traffic over the railroad tracks north of this site. Plans for this project show that .207 acres of land off the front of the property was purchased for right-of-way.

**ENVIRONMENTAL AND UTILITY CONSIDERATIONS:**

City sewer and water do not serve this site. The County Health Department has no record of a septic permit for this site but its location is shown on the site plan. Additionally, a 50' wide power line easement runs the length of the western property line.

### STAFF COMMENTS:

Petitioner is requesting a sign setback variance of 2' from the edge of the right-of-way that was recently purchased for the construction of the completed bridge. Currently there are three businesses in operation at this site. The site plan shows a freestanding pole sign with a height of 18'. The proposed location is in the front of the building centrally located along the US 52 right-of-way. The submitted rendering of the sign shows an integrated center sign with all business names listed. The site plan indicates that an additional 22' of right-of-way was recently acquired by the state in front of the proposed sign location. If the sign had been in place before the land was purchased for the bridge, it would have met the standard with a sign setback of 24'. No variance would have been necessary after the right-of-way purchase, because the ordinance states, "any conforming structure made a nonconforming structure by a government taking or by grant of right-of-way, shall be considered conforming within the context of this ordinance." (UZO 5-1-6a).

Additionally the proposed location of the sign poses no immediate threat to traffic because it would not block vision of traffic entering or leaving the site and would be setback over 18', the height of the sign, away from the south bound traffic lane. Actual visibility of the sign by the travelling public is not impeded in any way by the construction of the bridge; in fact this site is highly visible from both directions on US 52, especially coming over the bridge from the north.

While staff agrees that there are practical difficulties due to the width of the right-of-way purchase, it is also true that petitioner has other options. A monument sign with a height of 4' could be constructed 4' from the right-of-way; or petitioner could forego a pole sign entirely and make use of larger fascia signage on the building.

Regarding this case, the Area Plan Commission unanimously voted that the sign ordinance be strictly adhered to.

Regarding the ballot items:

1. The Area Plan Commission on September 21, 2011 determined that the variance requested **IS NOT** a use variance.

And it is staff's opinion that:

2. Granting this variance **WILL NOT** be injurious to the public health, safety, and general welfare of the community. Because of the acquisition of additional right-of-way, if the sign falls toward US 52 it will not pose a hazard to the travelling public because it would still meet the fall down test of having a setback of at least the height of the sign.
3. Use and value of the area adjacent to the property included in the variance request **WILL NOT** be affected in a substantially adverse manner. The sign meets all setbacks from adjacent property lines and the request only affects the setback along US 52.

4. The terms of the zoning ordinance are being applied to a situation that **IS** common to other properties in the same zoning district. Acquisition of land by the state for the US 52 bridge created a new right-of-way line from where sign setbacks are measured but adjacent properties would be held to the same standard if they were to erect a new sign.
5. Strict application of the terms of the zoning ordinance **WILL NOT** result in an unusual or unnecessary hardship as defined in the zoning ordinance. There are other types of signs, such as monument or wall-mounted signs, and other locations at which the petitioner could install a sign on this property without a variance.

**Note:** Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship involved **IS** self-imposed or solely based on a perceived reduction of or restriction on economic gain. There are other types of signs and other locations on site where a sign could be located that would not require a variance but these locations are not as desirable as the proposed setting.

5b. The variance sought **DOES NOT** provide only the minimum relief needed to alleviate the hardship. In this case there is no minimum relief because there is adequate area on the site to place a different sign and still meet all setback requirements.

**STAFF RECOMMENDATION:**

Denial